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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: S. IP

Docket: NI 138

Applicant(s): Fritz Appel

Serial No.: 10/021684

In Response to Paper No.: 7

Filing Date: 12/11/01

Art Unit: 1742

Title: METHOD FOR THE TREATMENT OF METALLIC MATERIALS

Commissioner for Patents
Alexandria, VA 22313-1450
FAX 703 872-9310

June 15, 2004

CERTIFICATE OF FACSIMILE TRANSMISSION

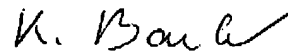
I hereby certify that this correspondence is being facsimile transmitted to the US Patent Office as a response before final action (Fax No. 703 -872-9310 - TC 1700) on June 15, 2004.

Included are:

Petition for an extension of time by 3 months

7 pages of response

Copy of German patent 100 62 310 C2



Klaus Bach

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Fax Notes:

Date and time of transmission: Tuesday, June 15, 2004 6:21:06 PM
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It is pointed out here that a blank (not a bank) is "a manufactured article which is still to be finished by further treatment".

The cited reference does not deal with blanks but rather with material mixtures as referred to in the introductory part of the application where the state of the art is discussed. The Examiner is urged to read again the introductory part of the application, page 1, line 5 to page 3, line 26, which describes a.o. processes as disclosed in the cited reference and where it is explained that and why these processes have certain disadvantages.

The reference does not disclose that a blank is heated to a transformation temperature – rather, the reference discloses that the powder or particles are subjected to friction whereby the material is heated close to its melting point; and the reference certainly does not disclose that the blank is twisted about its longitudinal axis and at the same time, compressed in the direction of the longitudinal axis; rather, in the method according to the cited reference, where there is no blank, but material powder or particulates, which are subjected to friction by the rotation of the plunger to form a hot mixing zone from which the material is extruded.

In other word, every step of the method according to the invention as claimed is different from what might be considered to be a similar procedural step of the method according to the cited reference. It is not just that the heating of a certain length of the blank or heating the blank over its full length in the method according to the invention is different from the method of the cited reference as alleged by the Examiner, rather every method step is different from the method steps of the cited reference.

But the invention as defined in claim 1 is not only different from the process as disclosed in the cited prior art. There is furthermore no basis for the Examiner's allegation that the invention is obvious from the cited reference.

In this regard, reference is made to the following decisions:

"Contrary to the position taken by the Examiner in determining the patentability of an invention, it should be recognized that the fact that the prior art could be modified in an Examiner's view so as to result in the combination defined by the claims at bar would not have made the modification obvious unless the prior art suggests the desirability of the modification." See In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986).

Furthermore, In re Laskowski, CAFC, No. 88-1349, decided April 3, 1989, concerning an invention utilizing, for the support of a saw band, a loose tire rather than a tightly fitted tire, the Court stated that, although the Commissioner suggests that Hoffman (the cited prior art utilizing a tightly fitted tire) could readily be modified to form the Laskowski structure (with loosely fitted tire), the mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.

In the present case the cited reference does not include any suggestion which would lead to a method wherein a blank of the body to be manufactured consisting of the metallic material is twisted while it is axially compressed for a consolidation of the texture of the metallic material.

In view of the above, the Examiner is respectfully requested to reconsider his rejection of claim 1 of the present application under 35 USC § 103 as being unpatentable over US 5 262 123.

It is also noted in this regard that the corresponding German application has issued under No. 100 62 310. A copy is attached. It may furthermore be pointed out that the corresponding Chinese and Russian patents have also issued. All of these countries have quite stringent examination procedures.

In any case, it is believed that, upon reconsideration, the Examiner will agree that claim 1 as amended is patentable. Claim 2 has been cancelled as its subject matter has been included in claim 1.

Claim 3 to 9 are directed to various steps which are considered to be advantageous in connection with the method as defined in claim 1.

Claim 10 defines that the metallic material is titanium aluminide which has a texture obtained by the heating of the blank and deforming it by twisting under compression.

And claim 11 defines the composition of the titanium aluminide as Ti - 47Al - 3.7(Nb, Cr, Mn, Si) - 0.5 Br-- amended to correspond to definition given in the description.